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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

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:: JUDGMENT ::

The United India Insurance Co. Ltd. Vs. Smt. Kisturi & Ors.

S.B. CIVIL MISC. APPEAL NO.1226/2007.

Against the award dated 16.08.2004 made by the Motor Accidents Claims Tribunal-I, Jodhpur in Claim Case No.194/2002.

Date of Judgment :::: 27th July 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manoj Bhandari with
Mr. Sushil Bishnoi, for the appellant.
Mr. S.K. Sankhla for
Mr. Rajesh Panwar, for the respondents.

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BY THE COURT:

This appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act'/'the Act of 1988' hereafter) has been preferred by the insurer of a three-wheeler bearing registration No. RJ19 P 6916 being aggrieved of the award dated 16.08.2004 made by the Motor Accidents Claims Tribunal-I, Jodhpur in Claim Case No.194/2002.

By the award impugned, the Tribunal has allowed the claim application under Section 163-A of the Act made by the parents and minor children of the vehicular accident victim Shiv Narayan (about 30 years); and has awarded compensation in the sum of Rs.4,12,500/- while assessing pecuniary loss at Rs.4,08,000/-, and allowing Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. The insurer essentially seeks to question the very competence of the claim application for the reason that the victim Shiv Narayan himself was the driver of the insured vehicle; and, according to the appellant, liability in relation to the said victim is not covered under the 'Act only' policy.

Background facts are that on 10.04.2002, the claimants-respondents Nos. 1 to 4 made the claim application under Section 163-A of the Act of 1988 with the submissions that on 04.11.2001 at about 7:40 p.m., the victim Shiv Narayan was driving a three-wheeler bearing registration No. RJ19 P 6916 taking passengers from Air Force Circle to Mohanpura in the city of Jodhpur; that near Officers' Mess, the three-wheeler capsized on being hit by an oncoming tractor bearing registration No. RJ19 1R 2005; that the passengers occupying the three-wheeler were thrown out but the driver Shiv Narayan was crushed beneath the vehicle; and that the victim Shiv Narayan died due to the injuries sustained in this accident

while undergoing treatment. For the victim having died due to accident arising out of the use of the said three-wheeler, the claimants asserted their entitlement to claim compensation in terms of Section 163-A read with Second Schedule to the Act from the registered owner of the three-wheeler, the non-applicant No.1 (wife of the victim Shiv Narayan); and its insurer, the non-applicant No.2 (the present appellant).

The claimants sought compensation in the sum of Rs.4,57,834/- with the averments that the deceased Shiv Narayan was about 30 years of age, and was earning Rs.5,000/- per month while being engaged as a driver on the vehicle in question. The claimants averred that the annual income of the deceased was Rs.60,000/- but as the claim was being made under Section 163-A of the Act, they were putting the income of deceased at Rs.40,000/- and giving up the remaining Rs.20,000/-; that with application of multiplier of 18 (this is an obvious typographical error in the claim application because calculation has been made with multiplier of 17), the income would come to Rs.6,80,000/- and deducting one-third wherefrom towards personal expenditure of the deceased, the remainder would be Rs.4,53,334/-; and that with addition of Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate, the claimants were entitled for total amount of Rs.4,57,834/-.

The appellant-insurer submitted a reply stating denial of the claim averments and raised the objection that the accident occurred due to the fault or mistake on the part of the deceased himself and, therefore, the claim application was not maintainable; that the deceased was the husband of the owner of the vehicle and was not in the employment of the vehicle owner; and that he was not holding a valid and effective driving licence.. It was also averred that for the negligence of the tractor driver, the persons related with the said tractor were necessary parties and in their absence the claimants were not entitled for any compensation.

On the pleadings of the parties, the Tribunal framed the following issues for determination of the relevant questions involved in the case:-

> "(1) आया प्रश्नगत् वाहन विक्रम थ्री व्हिलर संख्या RJ19-P-6916 के दिनांक 04.11.01 को सांय करिब 7.40 बजे जोधपुर में एयर फोर्स से पांच बत्ती की आम सड़क पर उक्त वाहन चला कर की गई दुघर्टना में आई चोटों के परिणाम स्वरूप श्री शिवनारायण पुत्र श्री नरसिंहदास वैष्णव की मृत्यु हुई ?
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> (2) आया विपक्षी संख्या - दो बीमा कम्पनी द्वारा अपने लिखित कथन की प्रारम्भिक आपत्तियों एवं विशेष कथन के मद्देनजर तथा क्या विपक्षी चालक के पास वैध व प्रभावी ड्राईविंग लाईसेन्स नहीं था तो क्या बीमा कम्पनी अपने दायित्व से मुक्त हो सकती है, नहीं तो इसका प्रभाव है ?

(3) आया दावेदार अपने दावे / दावों में अंकित प्रश्नगत् राशि या अन्य कोई न्याय सम्मत् राशि पा सकते है, हां तो कौन कौन दावेदार कितनी कितनी राशि, किस किस विपक्षी से एवम् किस प्रकार से पा सकते है ?

The claimants examined Smt. Kisturi Devi, mother of the deceased as PW-1 and produced relevant documentary evidence. The non-applicants did not lead any evidence.

After hearing the parties, the Tribunal decided issue No.1 in favour of the claimants with the observations that the claim for compensation was made under Section 163-A of the Act that was based on the principles of no-fault liability and no any negligence on the part of the driver or any other person was required to be proved and it was sufficient if any person suffered loss for the use of a motor vehicle; and in the present case it was proved that the accident occurred for and during the use of the three-wheeler in question and there was no rebuttal of the basic facts established by the claimants in their evidence. The Tribunal, therefore, held the non-applicants liable for compensation. The Tribunal further decided issue No.2 against the insurer for want of relevant evidence.

Taking up quantification of compensation in issue No.3, the Tribunal referred to the assertion of the claimants about monthly income of the deceased at Rs.5,000/- per month but for want of any corroborative evidence did not accept such

assertion and, instead, put an estimate on his income at Rs.3,000/- per month; and with reference to the age of the deceased at 30 years, with application of multiplier of 17 and with deduction of one-third on personal expenditure of the deceased, assessed pecuniary loss at Rs.4,08,000/-; and while allowing Rs. 2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate, assessed total loss for the claimants at Rs.4,12,500/-. While making the award in this amount, the Tribunal allowed interest @ 9% per annum from the date of filing of the claim application.

Aggrieved by the award aforesaid, the insurer has preferred this appeal taking the grounds that the Tribunal has failed to consider the significant aspects of the matter that the owner of the vehicle in question is none else but wife of the deceased, daughter-in-law of the applicants Nos. 1 and 2 and mother of the applicants Nos. 3 and 4 and thus, compensation is being claimed by one legal representative of the victim against another legal representative and the liability is being sought to be fastened upon the appellant insurance company. Further, according to the appellant-insurer, Sub-section (2) of Section 163-A of the Act of 1988 enables only third party to claim compensation without determining the question of neglect or default of the owner of the vehicle concerned and the term “any other person” in Sub-section (2) of Section 163-A

does not refer to the driver. Yet further, according to the appellant, the statutory requirements of compulsory coverage of the risk of persons or classes of persons does not encompass the risk of the driver of such vehicle; and the liability in relation to the victim who was the driver of vehicle is not covered under the 'Act only' policy. It has also been urged that the Tribunal has erred in putting an estimate on the income of the deceased at Rs.3,000/- per month without any evidence to that effect; and further that for the claimants asserting annual income of the deceased at Rs.60,000/-, claim for compensation under Section 163-A of the Act was not competent because the said provision has been enacted in order to extend relief in relation to the persons having income less than Rs.40,000/- per annum. It has also been contended that the rate of interest awarded @ 9% per annum is on the higher side.

While admitting this appeal after condoning delay, this Court ordered on 17.04.2007 to place the matter for final disposal; and hence, learned counsel for parties have been heard finally.

At the outset, learned counsel Mr. S.K. Sankhla appearing for the respondents-claimants submitted that though the competence of the claim application under Section 163-A of the Act of 1988 is sought to be questioned in this appeal by

the appellant-insurer with the contentions that the victim himself was the driver of the vehicle in question, and the owner was none else but his wife and that the 'Act only' policy issued by the insurer was not of coverage of the risk in relation to the driver of the vehicle concerned; however, such questions stand concluded against the insurer for the view taken by this Court in the case of United India Insurance Co. Ltd. Vs. Smt. Rekha & Ors. (S.B. Civil Misc. Appeal No.1824/2006 decided on 19.03.2007). Learned counsel for the appellant insurer though submitted that the insurer contends against the competence of this claim application under Section 163-A of the Act for the victim himself being the driver of the vehicle and his risk being not covered under the policy in question; but frankly admitted that this Court in the aforesaid case of Smt. Rekha has ruled against the insurer on these questions.

In the aforesaid case of Smt. Rekha, the victim was driving a motorcycle of the ownership of his father; and the mother, wife and the minor child of the victim sought compensation under Section 163-A of the Act for the reason that the death of the victim resulted from an accident arising out of the use of the said motorcycle. The Tribunal allowed the claim application and awarded compensation under Section 163-A of the Act. It was argued on behalf of the

insurer that the deceased did not answer to the description of 'third party' for the purpose of coverage under the insurance policy in question and, therefore, the Tribunal had been in error in making the award of compensation against the insurer; and that there was no requirement under the statute to cover the risk of a driver of the motor vehicle. It was also argued that the deceased was himself negligent and was responsible for the accident and that Section 163-A of the Act cannot be interpreted in the manner that compensation would be awarded even for the negligence of the victim himself.

This Court negatived the contentions aforesaid after examining the special provisions of Sections 163-A and 163-B of the Act of 1988, the provisions of Sections 140, 147 and 149 of the Act, the scheme of insertion of Sections 163-A and 163-B by the Amendment Act No.54 of 1994 in Chapter XI of the Act of 1988 and simultaneous amendment to Section 149 (1) of Act of 1988, and the over-riding effect of the newly inserted Section 163-A; and after referring to the decisions dealing with the subject, including those of the Hon'ble Apex Court in Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala : 2001 ACJ 827 (SC); and Deepal Girishbhai Soni & Ors. Vs. United India Insurance Co. Ltd : (2004) 5 SCC 385. This Court has particularly noticed the following observations of the Hon'ble Supreme Court in Deepal Girishbhai Soni's case :-

> "66. We may notice that Section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, "under the provision of the Act", "provisions of this Act", "under any other provisions of this Act" or "any other law or otherwise". In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of."
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> (emphasis supplied)

This Court, then, pointed out in the case of Smt. Rekha (supra),-

> "Thus, it is clear that the scheme of Section 163-A of the Act has come on its fuller exposition by the Hon'ble Supreme Court in the cases of Hansrajbhai V. Kodala and Deepal Girishbhai Soni and there remains no doubt with these pronouncements that Section 163-A of the Act covers the cases where the negligence is on the part of the victim himself."

And, this Court expressed the opinion thus :

> "This court is of opinion that in the context of the decision in Deepal Girishbhai Soni's case (supra), the observations of the Hon'ble Supreme Court in paragraph 66 as noted above cannot be termed as mere obiter dictum. As noticed above, the matter was referred to the Larger Bench of the Hon'ble Supreme Court for the reason that correctness of the decision of Hansrajbhai V. Kodala was doubted and then the entire scheme of Section 163-A of the Act was before the Hon'ble Supreme Court for interpretation in order to rule on its true and correct operation. This Court is clearly of opinion that in view of the decision of the Hon'ble Supreme Court in Deepal Girishbhai Soni's case, the law is required to be taken as well settled that Section 163-A of the Act covers the cases even where the negligence is on the part of the victim and that provisions of Section 163-A of the Act have their effect overriding other provisions of the Act."

In Smt. Rekha's case, this Court has also considered the submissions that there is no requirement of compulsory coverage of the driver of the vehicle and rejected the same in the context of Section 163-A of the Act while observing,-

> "The other limb of submission of the learned counsel for the appellant-insurer has been that the victim himself was the driver of the motorcycle and, being not compulsorily required to be covered under Section 147 of the Act, risk in his relation

was not covered under the insurance policy and hence, the Tribunal has been in error in fastening the liability on the appellant. The submission on its face appears wee bit attractive but turns out to be hollow and baseless.

A close look at the provisions of Section 163-A of the Act makes it clear that the said provision overrides every other provision of the Act and, as pointed by the Hon'ble Supreme Court, is a Code in itself; and it operates notwithstanding anything contained in the Act or in any other law for the time being in force or any instrument having the force of law. Under the said provision, owner of the motor vehicle and its authorised insurer have been made liable to pay compensation for the loss (for death or permanent disablement) arising out of use of motor vehicle; and the amount of such compensation has been quantified in the Second Schedule appended to the Act. The submission as made by the learned counsel for the appellant-insurer with reference to Section 147 of the Act is required to be rejected for the fundamental reason that in the present case, claim for compensation has been dealt with under Section 163-A of the Act and NOT under Section 166 of the Act. Once, it is clear that Section 163-A of the Act overrides every provision of the Act itself, it necessarily follows that it overrides even Section 147 of the Act. The submission that compulsory coverage under Section 147 of the Act is only in relation to certain classes of persons and that the driver of the vehicle, and for that matter a passenger, is not required to be covered and he does not answer to 'third party' are all fundamentally irrelevant for the reason that the liability of the authorised insurer under Section 163-A stands notwithstanding anything contained in the Act; obviously notwithstanding anything contained in Section 147 either."

This Court further pointed out incorrectness of the argument regarding limited coverage as made only with reference to Section 147 of Act; and, while referring to the significant amendment of Section 149 (1) of Act simultaneous with insertion of Section 163-A, this Court observed,-

> "The peculiar aspect that Section 147 of the Act as such limiting the coverage would not be applicable for the purpose of Section 163-A of the Act could be readily noticed from sub-section (1) of Section 149 of the Act. Under the said provision when a certificate of insurance has been issued under Section 147(3) of the Act in favour of the person by whom a policy has been effected and a judgment or award is obtained against a person insured with the policy, the insurer has been made liable as a judgment-debtor for the liability together with the amount of interest. And, the liability concerned has been distinctly stated: (i) "as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy)"; or (ii) "under the provisions of Section 163-A.
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> It is absolutely clear that while inserting Section 163-A in the Motor Vehicles Act, 1988, the legislature has taken care of making it meaningfully clear and unambiguous in its operation by specifying in Section 149 of the Act that the liability under Section 163-A of the Act is separate and distinct from the liability under Section 147(1)(b) of the Act; and the insurer is under an obligation to bear the same.
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> Only the liability under Section 147(1)(b) of the Act has been referred by the appellant-insurer in support of its contention

> that the driver was not compulsorily required to be covered under the insurance policy. The argument misses the crux of the matter that the liability under Section 163-A of the Act is distinct from the liability under Section 147 of the Act. It is for this reason that Section 163-A refers to the liability of the owner of the motor vehicle or of the authorised insurer and once the appellant has been the authorised insurer, its liability under Section 163-A, remains and operates alongside, and, if necessary, irrespective, of the provisions of Section 147 of the Act."

This Court has also referred to a Division Bench decision of the Hon'ble Gujarat High Court in the case of New India Assurance Co. Ltd. Vs. Muna Maya Basant : 2001 ACJ 940 and has particularly noticed the following observations:-

> "The insurance company who is the appellant can challenge the claim only on the ground of no contract at all, i.e., no insurance, or on the above-stated grounds. It may be stated that it is not the case of the appellant that the vehicle in question was not insured with it or that the insurance was not in force at the time of accident."

and further that ,-

> "Under the Act, the liability of the insurance company is statutory and that can be spelt out from section 147. Charging extra premium, the insurance company may prefer to cover higher liability or risk or unlimited liability. In any

> case, therefore, the contractual liability will not be less than the statutory liability. It may be stated that by introduction of section 163-A, the liability as arising thereunder must now be deemed to have been covered under statutory liability regardless of the pecuniary limit in that regard specified in the policy, or premium charged. In other words, the limits of the statutory liability should be deemed to have been extended or enlarged appropriately so as to cover the liability that arises under Section 163-A."
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> (emphasis supplied)

While agreeing with the view expressed by the Hon'ble Gujarat High Court in Muna Maya Basant this Court observed,-

> "When the insurer has undertaken 'Act only' liability, and the enactment itself provides a liability under Section 163-A with much wider non-obstante clause, this Court finds itself in agreement with observations of the Hon'ble Gujarat High Court that the insurance company could resist the claim only on the ground of no contract at all. It is noticed from the cover note Ex.5 that the appellant-insurer has proceeded to issue Act only policy and this 'Act only' policy obviously means that statutory liability under the enactment is intended to be covered. It would be a misnomer to suggest the meaning of 'Act only' liability while looking at Section 147 of the Act only, and in the name of 'Act only' policy, the insurer cannot simply forget about Section 163-A of the Act nor could by-pass the requirements of these over-riding provisions. The 'Act only' policy issued by the appellant covers all the liabilities arising under the Act which

> are required to be taken care of; and when there is a liability in the owner of the vehicle under Section 163-A of the Act, the appellant-insurer is required to indemnify. In the aforesaid view of the matter, this Court is clearly of opinion that the submissions made by the learned counsel for the appellant in relation to non-coverage of risk of the driver cannot be accepted and are, therefore, rejected."

In view of the decisions aforesaid, the arguments sought to be urged on behalf of the appellant in this case cannot sustain themselves; and deserve to be rejected.

The submission that the claim for compensation has been made by impleading the wife of the victim as non-applicant No.1 in the capacity of owner of the vehicle in question and thereby one legal representative seeks compensation against another legal representative of the victim has no substance and has no adverse effect on the competence of the present claim. It has not been shown as to how and in what manner the claim for compensation by some legal representatives and dependents of the victim after joining the other legal representative as non-applicant is prohibited if such non-applicant legal representative happens to be the owner of the vehicle, like the wife of the victim in the present case. Claim for compensation against her cannot be said to be prohibited. Moreover, for giving true and fullest effect

to the scheme of the provisions of Section 163-A, there does not appear any reason to hold that such a course is impermissible.

So far the quantum of compensation is concerned, the deceased was about 30 years of age and was said to be engaged as a driver on the three-wheeler in question. Primary facts have been established in the claimants' evidence and there is nothing in rebuttal to disbelieve the fact that the victim was not engaged as a driver on the vehicle in question and it cannot be concluded on mere conjectures or suppositions that he could not have been engaged as a driver on the vehicle of his wife, i.e., a three-wheeler belonging to his wife. The submission that the claimants asserted the income of the deceased at Rs.60,000/- per annum and, therefore, the claim for compensation under Section 163-A was not competent, also deserves to fail as the claimants, in view of the requirements of Section 163-A, have restricted their claim while putting the income of the victim at Rs.40,000/- per annum only. Moreover the Tribunal has assessed pecuniary loss while taking the income of the victim at Rs.3,000/- per month, i.e., Rs.36,000/- per annum only. Application of multiplier of 17 cannot be said to be excessive as the age of the victim has been stated at 30 years in the claim application and so also in the postmortem report, Ex.4. The assessment of loss does

not suffer suffer from any error nor it could be said that the quantum awarded is highly excessive so as to warrant interference in appeal.

Rate of interest at 9% per annum appears to be wee bit on the higher side but such rate of interest in the award made in the year 2004 cannot be said to be so inappropriate or excessive as to call for interference in appeal.

In the aforesaid view of the matter, this appeal preferred by the appellant insurer remains bereft of substance, particularly in view of the decision of the Hon'ble Apex Court in the case of Deepal Girishbhai Soni (supra) and of this Court in the case of Smt. Rekha (supra).

The appeal fails and is, therefore, dismissed. There shall be no order as to costs.

It is required to be noticed that the present appeal was filed belatedly by the appellant insurer for the reason that the appellant earlier took a challenge to the validity of Section 163-A of the Act by way of writ petition before the Division Bench of this Court which was ultimately dismissed. While considering the matter for condonation of delay in filing this appeal and issuing notices on the application moved by the appellant, this Court by the order dated 14.02.2006, noticed that the Division Bench had already passed the order for depositing the amount of award before the Tribunal. This Court, in the circumstances,

directed that the amount deposited shall not be disbursed. It has been pointed out during the course of submissions that the appellant insurer had already deposited the cheques for payment of the amount under the award in question before the Tribunal but the same have not been encashed and the validity period of the said cheques has since expired.

Having regard to the circumstances of the case, it is considered appropriate and hence directed that if the said cheques have not been encashed and they have expired, the appellant insurer shall deposit the amount of the said cheques with the Tribunal within 30 days from today.

(DINESH MAHESHWARI), J.

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